

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

TIMOTHY ARTHUR BERRY,

Plaintiff,

v.

DOLORES TRESE,

Defendant.

Case No. 16-cv-10174

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

**ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING
PLAINTIFF'S COMPLAINT**

On January 19, 2016, Plaintiff Timothy Arthur Berry filed a complaint against Dolores Trese, an attorney with Legal Aid. In the complaint Berry claims that Trese violated a series of his constitutional rights including his Seventh, Fifth, and Fourteenth Amendment rights. Berry also applied for permission to proceed *in forma pauperis*. Berry's case was referred to Magistrate Judge Patricia T. Morris for general case management.

On February 3, 2016, Judge Morris issued a report recommending Berry's complaint be dismissed for failing to state a claim on which relief may be granted. *See* Rep. & Rec. 5–7, ECF No. 7 Judge Morris explained that there is no evidence that Trese is a state actor or was acting under the color of state law during the period when Berry alleged his rights were violated. Thus, Judge Morris concluded, Berry's complaint is meritless and does not state a claim under 42 U.S.C. § 1983.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the

Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 7, is **ADOPTED**.

It is further **ORDERED** that Plaintiff Timothy Berry's Complaint, ECF No. 1, is **DISMISSED with prejudice**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: February 24, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 24, 2016.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager